A NEW METHOD OF CONSTITUTIONAL AMENDMENT BY POPULAR VOTE

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The peculiar position of the judiciary in our constitutional system and the insistent demand for advanced economic legislation, has led in many instances to a conflict between the desires of the people and the decisions of the courts, especially some of the state courts, in respect to the constitutional right to enact what many consider much-needed legislation. These conflicts have led many to insist that the people shall have a right to recall, by popular votes, judges with whom they have become dissatisfied. Colonel Roosevelt, on the other hand, has proposed that the people shall have what he terms a right to recall a certain class of decisions on state constitutional questions.

In discussing the wisdom of any proposition it is essential to get first a clear idea of exactly what the proposition is. The strong protest from many members of the legal profession against Colonel Roosevelt's plan is unquestionably in great part due to a misunderstanding of exactly what it is that he proposes. What he does propose is this: If an act of the legislature is declared by the state courts to violate a provision in the state constitution, after an interval for deliberation, the people of the state shall have an opportunity to vote on the question whether they desire to have the act become a law in spite of the opinion of the court that it is contrary to the constitution.

Owing to his expression, "The Recall of Decisions," many persons have supposed that Colonel Roosevelt meant that the court's judgment in the case in which the act was held unconstitutional should be reversed; that the judgment which we may suppose to have been given for the defendant would, by the vote of a majority of the people of the state assembled in voting booths, be made a judgment in favor of the plaintiff! It is needless to point out the ridiculousness of such a proposition. Even if we can be so foolish as to suppose that any American commonwealth could be induced

to adopt it, the provision would be, of course, unconstitutional under that clause of the fourteenth amendment of the federal constitution which provides that no state shall "deprive any person of life, liberty, or property without due process of law." As I shall have occasion presently to point out, the meaning of that clause has perhaps been somewhat extended in recent years; but no one now doubts that whatever else it means, it unquestionably prevents a judgment being entered in favor of one party or the other in a criminal or civil suit by any other tribunal than a court. If A makes a claim against B, which B denies, B has the right to have the question whether the claim of A can be enforced determined by a court. When a court determines that one party to a suit is entitled to a judgment in his favor under existing law, constitutionally that judgment cannot be reversed except by a higher court, and whatever difficulty there may be in the accurate definition of the word "court," there is no question but that the voters of the state assembled in their respective voting precincts do not constitute a court. The plan proposed is not that the decision, meaning the judgment in the case, shall be recalled, but that the decision, meaning the opinion of the court that the act is contrary to the constitution, shall be so far recalled, that, after an affirmative vote by the people in favor of the act, the court cannot in a subsequent case declare that the act is invalid.

As thus explained, the real issue presented by the proposition of Colonel Roosevelt is whether this new method of amending *pro tanto* the state constitution has practical advantage in view of the methods now in force. Or, to put the matter in another way: While the explanation of the real nature of the proposition deprives it of all revolutionary aspect, is there any practical necessity for it? I shall try to answer this question.

The provisions of our state constitutions may be divided into two classes. First, there are those which deal with specific subjects. A single example will suffice. The Constitution of the State of Pennsylvania provides that "No act of the general assembly shall limit the amount to be recovered for injuries resulting in death or for injuries to persons or property."[1] Here we have a definite provision dealing with a specific subject. There is no possibility of misunderstanding its meaning and therefore practically no room for a differ-

[1] Art. III, section 21.

ence of opinion as to its application. In view of it the State of Pennsylvania cannot now pass a compulsory workmen's compensation act, the essential elements of such an act being that the plaintiff, irrespective of the negligence of the defendant, recovers a definite sum of money, while all rights under the existing law of negligence are abrogated. As applied to this concrete provision of the constitution, or to any similar specific provision, it may be freely admitted that Colonel Roosevelt's suggestion has no importance.

Another and important class of provisions in state constitutions is those which enunciate general principles, of which by far the most important and indefinite is the one which in one form or another expresses the idea that no one shall be deprived of his liberty or property without due process of law. Originally, as in the fifth amendment to the federal constitution, this provision probably merely meant that no one should be deprived of his liberty or property by the arbitrary action of the executive arm of the government. This, however, is a question on which students of our history may reasonably differ. There is no doubt, however, that to-day, under the decisions of the courts, whatever it originally meant, it now means:

First.—That the procedure by which a person is deprived of his liberty or what he claims to be his property, shall be "due" in accordance with the fundamental ideas of judicial procedure prevalent among English-speaking people.

Second.—That an act of the legislature is void which violates fundamental ideas of morality and social justice.

The most difficult of human problems is the adjustment of the economic liberty of the individual with necessary governmental regulation and action. The freedom of the individual is still as always essential to progress. On the other hand, it is also essential to progress that the people collectively by governmental regulation and action preserve and create conditions which tend to conserve and develop, not only the natural resources of the country, but the human resources,—the men, the women and the children. An act which limits the freedom of contract, or the use to which private property may be put, is usually spoken of as a police act; or an act passed under the police power of the state. If the act limits the freedom of the individual in a wholly unnecessary manner it violates "fundamental ideas of social justice," and the courts will declare it unconstitutional under the due process of law clause. In so doing,

of necessity, the judges must determine whether the act in question does or does not violate fundamental ideas of social justice. But ideas of morality and social justice change with changing social and economic conditions. A regulation of persons or property which is arbitrary and unfair to one generation is not necessarily arbitrary and unfair to another. When, therefore, an act is attacked before a court as arbitrary or unfair, and therefore as depriving persons of their liberty or property without due process of law, the court is confronted with the question of the standard by which they shall test the question presented: shall they test the act by the ideas prevalent in the past or by the ideas prevalent to-day? The courts have not given a clear answer to this question, and yet on the answer depends the usefulness of the functions performed by the courts in this class of cases. If the courts continually declare acts which are in accord with modern ideas of social justice, unconstitutional, because they violate some outworn system of political economy, they become intolerable clogs on the orderly solution of present social and economic problems. On the other hand, if they only declare unconstitutional, under the due process of law clause, those acts which do violate the ideas of social justice existing at the present time, they perform a function of inestimable value. That any act passed under the police power which is not contrary to the preponderant ideas of social justice, and which does not violate any specific clause of the federal or state constitution should be upheld by the courts is beginning to be generally recognized. Thus, Mr. Justice Holmes, speaking for the supreme court said: "The police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."[2]

Unfortunately the courts have not always followed the rule here laid down. A judge is not only influenced by precedent if other decisions have been made on similar legislation, but he is also consciously or unconsciously influenced by his own ideas of the necessity for the legislation. These ideas are the result of his education and experience, and this education and experience are not always such as to tend to make him sympathize with modern social and industrial legislation. The education and experience of different

[2] Noble State Bank *vs.* Haskell, 219 U. S. 104, 111.

judges vary, and therefore, no lawyer pretends to be able to reconcile all the decisions under the police power of the different courts of the United States or even of a single court. Of course, there are a large number of supposable acts, and some that have been actually passed, that are contrary to present ideas of social justice, and therefore are clearly arbitrary and unfair. When a court declares such an act void no protest is heard. The weight of public opinion is back of the decision, for the court has correctly interpreted the then prevailing sentiment, the test of due process in this connection.

The widespread feeling among laymen against courts, and even against written constitutions, which is a new and, I believe, an alarming feature in the current thought of the day, is due to the action of the courts in holding unconstitutional much of the legislation designed to rectify some of the more glaring evils of our present industrial system, such as statutes regulating hours of labor, work in tenements, workmen's compensation acts, etc. From the point of view of those keenly interested in such questions and coming in daily contact with the classes of the community practically affected by them, the effectiveness of such legislation often necessitates provisions which, to persons brought up under the economic and social philosophy of a few decades ago, appear unnecessary and arbitrary. Thus, much legislation which has been passed after years of effort on the part of those having special knowledge of existing conditions, and representing what to them, and indeed to the average man, is plain social justice, has appeared to some judges as unnecessary and arbitrary, and therefore has been held unconstitutional, under the due process of law clause in the constitution. Indeed, any one who has had anything to do with promoting social legislation knows, that no matter how carefully an act may be drawn, there is always a doubt in regard to its constitutionality until it is supported by the highest court of the state or by the Supreme Court of the United States. Any important act of any state legislature regulating social or industrial conditions is at the present day often little better than a patent issued by the government in a new art—of doubtful value until it has passed the gauntlet of the courts.

Numerous illustrations may be cited. For example, in 1886 the Supreme Court of Pennsylvania held unconstitutional an act which prohibited the payment of the wages of miners in anything but money. The act was aimed at the store-order system of pay-

ment, which was regarded by many persons as one of the great evils of the mining regions. The court might have held the act unconstitutional because it did not apply to all laborers. But Mr. Justice Gordon, who gave the opinion, declared that the provisions "are utterly unconstitutional and void inasmuch as an attempt has been made by the legislature to do what in this country cannot be done; that is to prevent persons who are *sui juris* from making their own contracts." In order to make it entirely clear that the ground of his decision was merely that the act was arbitrary, he tells us that the laborer "may sell his labor for what he thinks best, whether in money or goods, just as his employer may sell his iron and coal; and any and every law which proposes to prevent him from doing so is an infringement of his constitutional privileges, and consequently vicious and void." In view of the actual conditions in the coal regions at that time, the court's defense of the liberty of the mine laborer to accept an offer of goods, is a strange mixture of the ridiculous and the pathetic, while the fundamental distinction between the act so unceremoniously declared unconstitutional by the court, and an act prohibiting usurious contracts, is hard to understand.

In spite of the opinion of the Pennsylvania court that in this country such an act cannot be passed, many of our states have passed such acts, following similar acts in Germany and England; and, while the opinion of the Supreme Court of Pennsylvania has been followed in Illinois,[3] in Kansas,[4] and in Missouri,[5] such acts have been held constitutional in West Virginia, in Tennessee, in Colorado, and, in the case of Knoxville Iron Company *vs.* Harbison, by the Supreme Court of the United States.[6] The condition, therefore, in Pennsylvania is that, while an act prohibiting the payment of laborers in store orders is constitutional under the federal constitution, and while such legislation has been upheld in other states of the Union, it would require a formal amendment of the state constitution to make possible such legislation in Pennsylvania.[7]

In the well-known "tenement-house case,"[8] an act of New York

[3] Frorer *vs.* The People, 141 Ill. 171 (1892).

[4] Kansas *vs.* Haun, 61 Kan. 146 (1899).

[5] State *vs.* Loomis, 115 Mo. 307 (1893).

[6] 183 U. S. 13 (1901).

[7] For the cases and discussion of the acts dealing with store orders see "Freund on the Police Power," sections 319, 320 and 321.

[8] *In re* Jacobs, 98 N. Y. 98.

which prohibited the manufacture of cigars in tenement houses was declared unconstitutional. In Nebraska it was held to be beyond the power of the legislature to provide that eight hours should constitute a legal day's work for all classes of mechanics, servants and laborers other than those engaged in farm and domestic labor. The court regarded the statute, not only as class legislation, but also as an interference with the liberty to contract.

Colonel Roosevelt follows Mr. Justice Holmes. He believes that what is due process of law depends on present, not on past ideas of social justice. Therefore, when a court declares that a particular act deprives a person of his liberty or property without due process, it is in accordance with scientific principles to submit to the people the question whether the act is to them arbitrary and unfair. As all the court has done is to declare that the act is not justified by the "strong and preponderant opinion," there is no reason why the correctness of the conclusion should not be referred to popular vote, in order that it may be tested in the laboratory where that opinion is formulated.

But at this point it may be pointed out by those who doubt the practical value of Colonel Roosevelt's proposal, that, under our present system, if the court should be mistaken in regard to the ideas of social justice prevalent at the time in the community, all the people have to do is to have an amendment passed to their constitution specifically stating that an act of the character declared void by the court shall not thereafter be regarded as depriving any one of his liberty or property without due process of law.

It is well, however, to realize the practical result of this process of specific amendment as applied to the due process of law clause. By such amendments the people do not merely sanction a particular compensation act, or particular act regulating the hours of labor; but any compensation act or regulation of hours act which may be passed no matter how arbitrary its provisions.

This is exactly what has happened in New York as a result of the decision of the court of appeals holding the Workmen's Compensation Act unconstitutional. The people of the state seem to differ from the court on the question whether such an act is contrary to the fundamental rules of social justice. The bar association and other bodies more especially interested have, therefore, undertaken to urge the legislature to amend the due process of law clause, by a

specific declaration that nothing therein shall be held to prevent a workmen's compensation act. The amendment which has already passed one legislature is as follows:

> Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees; or for the payment, either by employers or by employers and employees or otherwise, either directly or through a state or other system of insurance or otherwise, of compensation for injuries to employees or for death of employees resulting from such injuries without regard to fault as a cause thereof, except where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for the adjustment, determination and settlement, with or without trial by jury, of issues which may arise under such legislation; or to provide that the right of such compensation, and the remedy therefor shall be exclusive of all other rights and remedies for injuries to employees or for death resulting from such injuries; or to provide that the amount of such compensation for death shall not exceed a fixed or determinable sum; provided that all moneys paid by an employer to his employees or their legal representatives, by reason of the enactment of any of the laws herein authorized, shall be held to be a proper charge in the cost of operating the business of the employer.

When the amendment is finally adopted practically any compensation act will be constitutional as far as the state constitution is concerned. For instance, an act might be passed providing that a man permanently disabled could only recover an equivalent of half wages for one year, and the courts, bound by the amendment, would be obliged to hold the act constitutional. Thus, under the present system, if the people of the State of New York do not adopt a formal amendment to their constitution, they cannot have any workmen's compensation act. On the other hand, if they do adopt the amendment proposed they can have, not only the particular compensation act which was passed, but any compensation act, no matter how arbitrary some of its provisions or classifications might be.

Or again take some recent history in Colorado. In 1899 the supreme court of that state declared unconstitutional an act which prohibited the employment of persons in underground mines for longer than eight hours per day, except in case of emergency where life or property was in imminent danger.[9] This decision was rendered in spite of the fact that the Supreme Court of the United States had, during the previous year, held that a statute of Utah, identical in

[9] *In re* Morgan, 26 Colo. 415 (1899).

terms except as to the penalty prescribed, was a valid police regulation.[10] As a result of this decision, the people of Colorado in 1901 approved the following amendment: "The general assembly shall provide by law, and shall prescribe suitable penalties for the violation thereof, for a period of employment not to exceed eight (8) hours within any twenty-four (24) hours (except in case of emergency where life or property is in imminent danger) for persons employed in underground mines or other underground workings, blast furnaces, smelters; and any other reduction works or other branch of industry or labor that the general assembly may consider dangerous to health, life or limb." Hence, exactly as in the other illustration given of workmen's compensation acts, any act regulating the hours of labor in the employments mentioned which the legislature chooses to pass, no matter how arbitrary the regulation, must be upheld by the courts acting in obedience to the amendment. It would be entirely possible for the general assembly to prescribe six hours, or four hours, or any period less than eight hours as the period of employment.

It takes no prophet to foretell that, with the prevailing desire for legislation which will correct some of the more obvious defects of our social and economic system, if the courts of a state are out of sympathy with such legislation, it will not be long before, by successive amendments, the due process of law clause of the constitution of the state will be practically abrogated. If no other system be provided, the present method of constitutional amendment, while permitting the people ultimately to express their desires in the constitutions, will, in the necessarily short statement of specific amendments, endanger other constitutional guarantees of their liberties which all consider essential to retain.

The advantages of Colonel Roosevelt's suggestion as applied to such instances as those referred to are obvious. He provides, it will be observed, a method of obtaining legislation which does correspond to the prevailing ideas of fairness and social justice, while at the same time retaining in our constitutions the principle that no act which is arbitrary or unfair should be recognized as law.

There is, however, one illustration which has been produced to show that the plan proposed by Colonel Roosevelt, instead of being a moderate and sane proposition as here claimed, is radical and dangerous. There is a class of cases in the courts, which, instead of

[10] Holden *vs.* Hardy, 169 U. S. 366 (1898).

declaring an act unconstitutional, merely states that it is unconstitutional as applied to the particular party to the litigation before the court, but not necessarily unconstitutional as to all persons who might be brought under its provisions. The case of Pennsylvania Railroad *vs.* Philadelphia[11] is a case in point. In that case the court declared that the act of April 5, 1907,[12] which provided that no railroad in the state should charge more than two cents a mile for the transportation of passengers, was unconstitutional as applied to the Pennsylvania Railroad, because that railroad could not make a reasonable return on its investment under such a regulation. At the same time the court admitted that, as far as the act applied to another railroad operating under different conditions, it might be constitutional. Similar decisions might be and have been made where the legislation has fixed the price on gas or other commodities furnished by a public service corporation.

It is pointed out that had the plan proposed by Colonel Roosevelt been in operation, the question whether the act should or should not apply to the Pennsylvania Railroad could be put to popular vote, and a vote in the affirmative would in effect, as far as the future charges were concerned, reverse the judgment.

It is, of course, beyond question that the plan proposed by Colonel Roosevelt would cover such a decision as the one referred to. The act declared that no railroad operating in the state should charge more than two cents a mile. There is no question but that the act applied to charges by the Pennsylvania Railroad. The court, therefore, declared the act unconstitutional as applied to conditions to which it was clearly intended to apply.

Personally, I believe that an act of the legislature which does not confer the power to make railroad rates on a commission, but, as the Pennsylvania act did, lays down by direct legislative action a definite rate, is essentially unsound and vicious. I have, therefore, sympathy with the very natural inquiry: "Would you put the question to the people as to whether such an act, in spite of the opinion of the court that it left some at least of the railroads of the state without an adequate return on their investment, go before the people to be voted on?" My reply to this question is that I certainly should not sign a petition to have such an act placed before

[11] 220 Pa. 100.
[12] P. L. 59.

the people, any more than I would move for its consideration, or vote in its favor if I were a member of the state legislature.

But the plan proposed by Colonel Roosevelt is not, in relation to the illustration now under examination, essentially different from the method of amendment now in force. It is perfectly possible to-day to amend our state constitution by popular vote, and then adopt a two cents a mile railroad rate bill, if there are enough persons determined to have such an act. Colonel Roosevelt's proposition, therefore, involves but a change in method. And, furthermore, there is just as much likelihood of the people of the State of Pennsylvania losing their heads and insisting on the adoption of such an amendment, as there is, under Colonel Roosevelt's plan, of their re-adopting such an act as the one referred to, after the decision of the court holding that, as applied to at least one railroad, it is unconstitutional.

There is a large number of persons who believe that the system by which a court is permitted, under the due process of law clause, to declare void an act of the legislature, merely because they believe that the act is arbitrary and unfair, is unwise. Such persons assert that this power in the courts makes of this country a "judocracy," and that the rule of judges is in the long run as intolerable, as the rule of an aristocracy or of any other special class. But, personally, I believe, that many acts are passed by legislatures without much consideration, and often at the instance of particular classes of the community, which do violate prevalent ideas of social justice, and that it is a peculiar advantage of our system of government in the United States, that we have a judiciary charged, by custom at least, if not by direct mandate, with the duty of refusing to regard an act as valid if in their opinion it is arbitrary and unfair. It is submitted that the people are entitled to be told by the court, that the act which the legislature has passed, is, in the opinion of at least the majority of the members of the highest court of the state, an arbitrary act. If after full notice and consideration they then choose to differ from the court, and adopt the act or a constitutional amendment, it can at least be said that the act was adopted on due consideration. I have, however, on the other hand, no sympathy with those persons who declare, that merely because an act has appeared as arbitrary and unfair to a small body of men—perhaps merely to three out of five, or four out of seven, persons—that thereafter that act or any

act like it cannot become a law, irrespective of the desire and opinion of the people. As between these two extremes—the desire of those on the one hand who would take from the judges all power to declare an act unconstitutional under "the due process clause," and on the other hand the desire on the part of a few to place all progress in social legislation at the mercy of the courts, the proposal of Colonel Roosevelt appeals as a moderate and sane proposition, tending to preserve the court in its power to set aside acts which appear to the judges as arbitrary, and yet at the same time preserving to the people the power ultimately to express in legislative form any law which a persistent majority desires.

This perhaps is the proper place to refer to a question which is frequently asked: Under Colonel Roosevelt's plan, how far would the action of the people in enacting legislation which the court has previously declared to be contrary to the state constitution, be regarded as a precedent which should influence the court when the act approved by the people is repealed, a second similar act is passed, and the question of the second act's constitutionality is brought before the court? If the original act was declared unconstitutional because it violated some specific clause of the state constitution, as the clause to which I have referred from the Constitution of Pennsylvania, or a clause protecting the obligation of contracts, the action of the people would, and should, have no effect on the court when another and similar act was before it. But as "due process of law" is that which corresponds to the preponderant and prevalent ideas of social justice in the community, a vote of the people adopting such an act as, for instance, a workmen's compensation act, would, and should, have great weight with the court when the second act on the same subject came before it, but so far only as it shows that such legislation, in its principle, is not arbitrary and unreasonable.

There is one matter which has tended to somewhat obscure the fundamental idea which is back of Colonel Roosevelt's suggestion. At the present time the method of amending our state constitutions differs greatly among the several states. In many states, the method of amendment is exceedingly cumbersome. In my own state, Pennsylvania, for instance, in order to amend the state constitution, the amendment must be passed by two successive legislatures before it can be voted on by the people, and the legislature meets only on alternate years. As a result of this and similar con-

ditions in other states, there is a very widespread feeling among large classes of people that the methods of amending state constitutions, and even our national constitution, should be less cumbersome than they are. This is not the place to enter on a discussion of the merits or demerits of this suggestion. The plan proposed by Colonel Roosevelt is, as I have tried to show, a method of dealing with differences of opinion between the court and the people on what regulations are arbitrary and unfair when applied to existing social and economic conditions. The length of time which should elapse between the decision of the court declaring the act void and the vote of the people on the act is a matter of detail. By this I do not mean it is unimportant. It is very important that the people shall have an opportunity to consider carefully the act and the opinion of the court before being asked to vote upon it; but at the same time, it is a detail in that it does not affect the essential features of Colonel Roosevelt's plan, whether the interval of time is three months, six months, a year, or even more.

One other matter should be referred to. Colonel Roosevelt has emphasized the fact that his suggestion for all present practical purposes applies only to acts which have been declared unconstitutional because they violate state constitutions, and not to acts declared unconstitutional because they violate the national constitution. I have emphasized the fact that the value of the suggestion made by him is largely confined to cases in which acts have been declared unconstitutional because they violated that clause of the state constitution which prevents property from being taken without due process of law. But the fourteenth amendment of the federal constitution also contains a provision "that no state shall deprive any person of his life, liberty, or property, without due process of law." Suppose an act comes before the state court and is declared unconstitutional because depriving a person of his property without due process of law contrary to that provision in the state constitution. Subsequently, under Colonel Roosevelt's plan, the act is voted on by the people, and becomes, as far as their votes can make it, a law of the state. The act again comes before the same court. The action of the people prevents that court from saying that the act is not a law because against the state constitution; but what prevents them from declaring the act unconstitutional because it violates the fourteenth amendment of the federal con-

stitution? There is, of course, nothing to prevent their doing so. There is nothing, for instance, to prevent the Supreme Court of New York, after the state constitution is amended so as to permit the passage of a workmen's compensation act, and another workmen's compensation act is passed, from declaring the new act void under the federal constitution. But the action of the people has at least enabled the question of the constitutionality of the act under the federal constitution to be brought before the Supreme Court of the United States. It is true that the methods of doing this under the present provisions of the Federal Judiciary Act are exceedingly cumbersome. Under the twenty-fifth section of that act, it is at present impossible to take a case to the Supreme Court of the United States from the highest court of the state where the latter has declared the act unconstitutional under the federal constitution. To bring the question before the supreme court, therefore, a case, and perhaps the first case, must be brought in the federal courts under the provisions of the third article of the Constitution of the United States which gives to those courts jurisdiction in cases of diverse citizenship. There is, however, a movement, now embodied in an act pending in congress, and which has the support of the American Bar Association, to amend the judiciary act which, should it be successful, will enable an appeal to be taken to the Supreme Court of the United States from a state court by either party, when the state court holds an act unconstitutional under the federal constitution. In any event, however, as stated, the Supreme Court of the United States would have an opportunity to pass on the question.

It may be asked, what would be done when the Supreme Court of the United States declared an act unconstitutional under the "due process" clause of the fourteenth amendment? If Colonel Roosevelt's plan is sound, why should it not apply and the act be referred to all the people of the United States? There is, of course, in theory no reason why this should not be done. I think, however, you will agree with me that it will be better to meet that question when, in passing upon acts demanded by the sense of social justice prevalent in the persistent majority of the people, the action of the Supreme Court of the United States in repeatedly declaring them unconstitutional, has created a strong sentiment among the people that that court does not represent modern ideas of social justice.

While this is the feeling towards many state courts, it is not

to-day the feeling towards the Supreme Court of the United States. There is, I am glad to say, a very general belief that that court, as now constituted, is probably in reasonably close touch with the desire of the people for social and economic legislation looking to the betterment of the conditions of life. The prevailing confidence that the Supreme Court of the United States will uphold, in spite of the decision of the Court of Appeals of New York, the constitutionality of any reasonable workmen's compensation act, either elective or compulsory, is an example of what I mean. Therefore, I think Colonel Roosevelt indicates the possession of a very large measure of practical wisdom when he suggests, that the plan he proposes, for the present at least, be confined to acts declared unconstitutional by state courts under state due process of law provisions.